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Error to Corporation Court of Roanoke.

Ira Kitchen was convicted of rape, and brings error. Affirmed.

John G. Challice, of Roanoke, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen., for the Commonwealth.

BROWN *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 112.]

1. Homicide (§ 314*)—Jury Can Not Fix Less Punishment on Convict for Murdering Guard than Electrocution.—Under Code 1919, § 5051, the jury can not fix any less punishment of a convict for murdering his guard than electrocution.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 169.]

2. Homicide (§ 144*)—In Prosecution for Murdering Guard, Commonwealth Must Prove Accused Was Convict.—In a prosecution of a convict for murdering his guard, under Code 1919, § 5051, the commonwealth must prove that at the time of the homicide accused was a convict.

3. Criminal Law (§ 446*)—Certified Copy of Judgment and Order of Condemnation Held Sufficient to Identify Defendant as Convict.—In a prosecution of a convict, under Code 1919, § 5051, for murdering his guard, a certified copy of the judgment and order of condemnation of defendant for a felony, for which the indictment charged he had been sentenced to a penitentiary term, which he was serving as a member of the convict road force, held sufficient to identify defendant as such convict.

Error to Circuit Court, Orange County.

Ernest Brown, a convict, was convicted of murdering his guard and he brings error. Affirmed.

E. H. De Jarnette, Jr., of Orange, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen., for the Commonwealth.

EVANS *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 113.]

Criminal Law (§ 1159 (3)*)—Finding of Fact by Jury Conclusive.—In a prosecution for the manufacture and sale of ardent spirits,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

where the evidence was conflicting, a finding of fact by a jury will not be disturbed on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 614.]

Error to Circuit Court, Halifax County.

Houston M. Evans was convicted of the manufacture and sale of ardent spirits, and he brings error. Affirmed.

McKinney & Settle, of South Boston, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen., for the Commonwealth.

TRENT *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 113.]

1. Larceny (§ 55*)—Evidence Sufficient to Support Conviction.—

On trial for larceny of a diamond ring intrusted to defendant and claimed by him to have been lost while he was intoxicated, evidence held sufficient to make a case for the jury and support a verdict of guilty.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 230.]

2. Criminal Law (§ 1159 (3)*)—Verdict on Conflicting Evidence Not Disturbed When Evidence Sufficient, if Believed, to Support It.

—Though the testimony is conflicting and not altogether satisfying as it appears in print, where the evidence to support the commonwealth's theory is sufficient, if believed, to warrant the verdict, the credibility of the witnesses and the weight of the testimony is for the jury, and an appellate court is not warranted in interfering with their finding.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 614.]

3. Embezzlement (§ 48 (1)*)—Modified Instruction as to Concealment of Ring, Lost While Intoxicated and Subsequently Found, Not Erroneous.—

Under Code 1919, § 4451, relative to the embezzlement of property lawfully coming into one's possession, the modification of an instruction as to loss of a diamond ring while intoxicated by adding that, if defendant, after regaining consciousness, discovered the ring and concealed or aided and abetted another to conceal it with intent to deprive the owner thereof, he would be guilty of larceny, was not erroneous.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 701.]

4. Criminal Law (§ 806 (1)*)—Instructions Similar to Instructions Given on Defendant's Motion Not Subject to Criticism.—An instruc-

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